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May 14, 2003

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF RICHARD KAUL, M.D. TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	Administrative Action FINAL DECISION AND ORDER

This matter was originally opened to the Board of Medical Examiners on the filing of a Provisional Order of Discipline (POD) by David Samson, Attorney General, by Michelle Albertson, Deputy Attorney General on September 20, 2002. A response was initially received from Anthony LaBue, Esq., of the firm of DeCotiis, Fitzpatrick, Gluck and Cole on November 11, 2002. The POD alleged that respondent, an anesthesiologist, had been convicted of negligent manslaughter in connection with the delivery of anesthesia to a dental patient in England, and as result thereof, had his license to practice medicine in England revoked, both of which were alleged to provide basis for discipline in New Jersey. The underlying conduct was further alleged to provide basis for

action as gross malpractice. In addition the POD asserted that respondent had made misrepresentations concerning his status on two applications - one submitted to Hackensack University Medical Center and one on the application submitted for the purpose of renewing his registration to prescribe controlled substances. Supplemental charges alleged additional misrepresentations in the biennial renewal application submitted to the Board in 2000. By way of defense, respondent sought a hearing before the Board and contended in a number of responsive submissions that the conviction and the foreign licensure action were an insufficient predicate for discipline in New Jersey, and that respondent's responses and omissions in various applications were not misrepresentations upon which the Board could rely.

PROCEDURAL HISTORY[1]

The Board began its consideration of finalization of the Provisional Order at its meeting of December 11, 2002. Susan Volkert, Esq., DeCotiis, Fitzpatrick, *Cole* and Wisler appeared on behalf of respondent; Deputy Attorney General Alan Niedz appeared on behalf of the Attorney General. The Board reviewed and made determinations on three preliminary motions at that time. First,

[1] Appearing as Attachment 1, is a complete listing of the correspondence that is part of the record in *this* matter. A proposed list was submitted to counsel after the hearing; the Attorney General supplied four additional items. No challenge to the listing was lodged by respondent. Accordingly the list attached hereto shall be deemed to be the catalogue of correspondence in this matter.

respondent moved to strike the responses *to* the Demand for Statement in Writing Under Oath that had been attached to the Provisional Order of Discipline ("POD") on the grounds that Dr. Kaul was not advised that he had a right to retain counsel to assist him in preparing his response. The Board rejected that argument, finding there to be no requirement in law to support the application of a Miranda-like warning as part of a Board of Medical Examiners investigation. Moreover, the questions posed and the responses provided related to events occurring in England which led to the filing of charges on which the respondent had already been convicted and, therefore, they did not put him in jeopardy of prosecution in New Jersey.

The Board also considered respondent's *motion* to strike the certification of Deputy Attorney General Alan Niedz, with attached documentation (Exhibits A through H), on the grounds that it was provided, contrary to a representation in the letter of November 22, 2002 indicating that the State would rely solely en the documents attached to the POD. In addition, it was alleged that it should be stricken because the submission constituted "undue surprise." The Board rejected these arguments. The transcript of the proceedings before the equivalent of the licensing authority in England was deemed to be a particularly relevant document that might afford the Board the opportunity to glean a better understanding of the events that occurred *in* England. These

materials, in fact, were supplied by Dr. Kaul to the deputy who originally filed the POD.

Finally, respondent made a motion to strike the POD in its entirety on the grounds that there was no conviction upon which a licensure action could be predicated because the verdict was not rendered by a unanimous jury as would be required as a matter of constitutional law in the United States. The Board denied the motion at that time, indicating that this argument could be advanced in the context *of* consideration of the case on the merits.

Thereafter, respondent offered into evidence a copy of a transcript of a portion of the proceeding before the Central Criminal Court, Old Bailey, London, concerning Richard Kaul, M.D. More specifically, the document, admitted by the Board as R-1[2], was the "summing-up", a recitation by the judge of the evidence adduced during the course of the criminal trial.

In the course of the December 11 Board meeting, it became evident that there had been other materials, totaling some *300* pages, supplied to the State in response to the demand that were not being offered into evidence by the State. Counsel for Dr. Kaul indicated that she did not have a copy of the materials that her

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[2] A complete listing of all of the evidence in this matter is appended to this order as Attachment 2. It was provided to counsel after the hearing date with a request that any corrections brought to the attention of Board counsel. None have been received; the attachment represents a complete list of the evidentiary record in this matter.

client had previously supplied to the Board. At that time the Board determined that, in fairness to Dr. Kaul, his attorney should have access to all of the materials that were available to the Attorney General -- even those documents that the Attorney General was not intending to offer, so that she would be in a position to introduce any documents that were exculpatory in nature.

By way of a scheduling order, the Board directed that the materials accompanying respondent's Demand for Statement in Writing Under Oath which had been forwarded to Deputy Attorney General Michelle Albertson, totaling approximately 300 pages, were to have been forwarded to Ms. Volkert on or before December 18, 2002. That delivery was accomplished, and thereafter additional documents were sent to Ms. Volkert in mid January, which materials comprised the record of the proceeding before the licensing authority in England -- Exhibits 1 through 19. By correspondence, and subsequent oral confirmation, Deputy Attorney General Niedz expressed his intention to offer all of these documents into evidence. A generalized objection was reflected in a responsive letter from Ms. Volkert. The matter was scheduled to proceed to final hearing on February 19, 2003.

By letter of January 28, 2003, Deputy Attorney General Niedz announced his intention to move a series of documents into evidence; specifically: Brief Enclosures 1 to 6, 8 to 10 and 12 to 17. By responsive letter of February 4, Ms. Volkert expressed the

view that the documents listed in the letter were not relevant to the proceeding. In addition Ms. Volkert "strenuously" objected "to the introduction of these documents at this late date, as they amount to undue surprise, privileged and confidential material and compromise Dr. Kaul's ability to defend himself against the states (sic) expanding and ever changing charges against him." An objection was also renewed as to "A to H", a reference *to* the attachments to the original Niedz certification on which the Board had ruled at the December 11 meeting.

On February 6, the Attorney General filed a motion to supplement the charges. Respondent sought additional time to respond to the motion, and, with the consent of the Attorney General, requested an adjournment of the February 19 hearing date. In lieu of proceeding on the merits on that date, a pre-hearing conference was held in an effort to establish a schedule for the determination on myriad procedural and evidentiary issues, in advance of the final hearing date, to facilitate the orderly conduct of the proceeding. At the pre-hearing conference, counsel for respondent advised that an intervening snow storm impaired her ability to provide the particularized objections to the additionally proffered evidence which had been requested by the Board's letter of February 14. Accordingly, the Board agreed to defer consideration of the additional issues and to accept a written articulation of evidentiary objections for *a* review at a

specially noticed meeting date of March 5. More specific evidentiary objections, any response to the still pending motion to supplement the charges and a witness list, with proffers were to be produced by March 3, 2003.

By submission dated March 3, respondent provided particularized objections to proffered evidence, specifically Exhibits 1 through 19, as set forth in Deputy Attorney General Niedz's letter of February 28, a response to the Attorney General's motion to supplement *the* charges filed on February *6* and a list of the witnesses intended to be presented at the April 12 meeting, along with a brief summary of the expected testimony. A responsive submission from Deputy Attorney General Niedz was provided on March 4.

The Board deliberated on the submissions on March 5 and at its meeting on March 12, *2003*, the Beard announced its decision on the preliminary matters before it. The Board granted the State's motion to file the supplemental changes. The issues raised by way of the State's motion to file supplemental charges were found to be germane to the Board's jurisdiction and authority and respondent's responsibilities as a licensee. The additional charges were noted to be similar to those presented in the original POD. Moreover, given that 1) this subject matter was certainly within respondent's knowledge, 2) he had been on notice of the State's intention to present additional bases for discipline since at least February 6,

2003, and 3) the matter would not be scheduled for hearing until April 9, the Board concluded that respondent would have ample opportunity to respond to the charges. Supplementation of the charges, prior to the finalization of consideration of the original POD, was deemed to be appropriate to the most expeditious, efficient resolution of the case.[3]

Via the March 3 submission, respondent also maintained that there were "inaccuracies" in the material supporting the motion to supplement the charges that would taint the Board. The Board determined that it was fully able to evaluate evidence and restrict its review to those materials formally admitted into evidence. It further noted that its reliance on certain documents *goes* to the issue of whether respondent provided truthful responses on his application, not to the accuracy of all of the information contained in the documents.

The Board also announced its decision with respect to the objections to the introduction of the State's documentary evidence,

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[3] Respondent asserted that certain issues brought to light in the context of the supplemental charges were entitled to confidential handling as they involve certain private health-related matters.. He suggested a need for a protective order. On the date of the hearing, the Attorney General made it clear that he was *not* pursuing any allegation of *a* present incapacity to discharge the functions of a licensee. One document admitted into evidence (P-7) relating to this issue will remain sealed, as well as some portions of the transcript wherein testimony was taken or argument made in closed session. Discussion relating to this issue may be found in the the sealed addendum to this order, Attachment 3.

and made specific evidentiary rulings as embodied in a letter of March 21, 2003, which is incorporated herein as if fully set forth. In essence, the Board determined to admit any of respondent's own statements, as well as the documents relating to the conviction and the licensure matter as they were likely to assist the Board in gaining a fuller understanding of the processes followed and the system *of* regulation in England. The statements by both prosecution and defense experts were admitted. A decision was deferred on those documents with respect to which confidentiality concerns had been raised. Enclosure 17 and Exhibit G, which were merely recitations of *the* events, were expressly excluded.

With respect to the witness list, the Board made preliminary determinations based on the proffers set forth and the State's responses. Although the Board determined that it would not permit a re-litigation of the matters upon which the action is grounded, it indicated that it would allow some latitude to establish "core facts", so as to enable the Board to assess whether the applicable predicates for discipline had been met. The Board determined that it would hear Dr. Kaul's testimony, as well as testimony a3 to his character, credentials or capabilities. It also indicated a willingness to accept testimony, should respondent offer it, concerning his psychiatric or psychological status. Two witnesses were listed with an indication that they would be testifying as to the standard of care, Drs. Paul Goldiner and Albert Saubermann.

Because the preliminary proffer had been scant with respect to these two witnesses, the Board did not definitively determine whether they they would be permitted to testify. It suggested that certifications be supplied, more fully detailing the proffer pertaining to the standard of care.[4] Determinations were also deferred on other witnesses for whom the proffers had been too vague. Finally, the Board determined that it would not accept the testimony of a retired Superior Court Judge, comparing and contrasting the legal system in Great Britain and the United States, as his personal opinions were unlikely to be helpful to the Board in its task.

At multiple junctures in the respondent's submissions, he renewed a request that the matter be heard by an Administrative Law Judge or a special committee of the Board, which request was consistently rejected. At the March 12, *2003* Board meeting the Executive Director of the Board advised that he was in receipt of a late submission asking for reconsideration of earlier decided issues. The Board had previously expressly authorized its Executive Committee to consider such submissions and any reply submitted, and advise the parties of its disposition. The renewed motion to dismiss was expressly denied by the Executive Committee, as

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[4] Dr. Saubermann was also to testify as to "the background preceding the events of the indictment." In the March 21 letter, the Board expressly indicated that it would not entertain such testimony, as it was considered irrelevant to the matter before the Board.

conveyed in a letter of March; and that decision was ratified by the full Board when it convened to finalize the matter on April 9, 2003.[5]

STATEMENT' OF PACTS

On March 9, 1999, Mrs. Isatu Bangura, a 56 year old woman from Sierra Leone, visiting England for her daughter's impending marriage, visited in a dental office in London for the purpose of a tooth extraction and other dental work. The "dental surgery", the term used for a dental office, was owned by respondent. Mrs. Bangura was a healthy woman, although somewhat obese. Dental work was undertaken by Mr. Stephen Zucchi, an Italian trained dentist, who was also a physician; anesthesia was administered by respondent. The regularly assigned dental nurse had called in sick on that date, the assistant participating in the care of Mrs. Bangura on that day was not qualified as a dental nurse. Shortly after the dental procedures were performed, Mrs, Bangura suffered

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[5] In the several days preceding the final hearing date, there was an effort made by respondent to depose Dr. Paul Goldiner, a witness who, according to the March 3 submission was to have testified concerning the standard of care. The deposition was asserted to have been necessary because of the doctor's unavailability because of an out-of-state commitment on April 9. Respondent maintained that the doctor would be available, by telephone to respond to supplemental questioning by members of the Board. Notwithstanding the Attorney General's opposition, arrangements were made €or a telephone, with speaker phone capacity to be available on the day of the meeting, to allow for testimony to be taken should the Board determine to allow it. In light of the determination that the Board ultimately made on the issue these arrangements were not necessary.

a cardiac arrest. Although the team on site was able to resuscitate and stabilize Mrs, Bangura, and an ambulance transported her first to Homerton Hospital and then to St. Bartholomew's, she died on March 15, 1999 at St. Bartholomew's Hospital, never having regained consciousness. The police began an inquiry into the circumstances surrounding the care that she received on March 9, even before her death. On October 15, 1999, respondent was arrested and charged with gross negligence/manslaughter in the death of Mrs. Bangura.

In the face of these criminal charges, on November 11, 1999, the General Medical Council ("GMC"), the British equivalent to the Board of Medical Examiners, forwarded to respondent a letter (contained in P-6[6]) reciting a series of allegations, in connection with the delivery of intravenous sedation to Mrs. Bangura on March 9,1999:

> i. You administered a combination of drugs which are known to be respiratory depressants,

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[6] P-6 was initially entered into evidence with the understanding that some portions of the document might need to be sealed as they dealt with issues with respect to which the Board had agreed to afford confidentiality. Actually only one sentence in the document contained such a reference. Counsel were advised, by letter of April 17, 2003, that they had affirmative obligation to respond if they deemed any other portions of P-6 to be entitled to such confidential handling. No such response has been received and the entirety of the document will be made available, save for the one identified sentence, in response to public inquiry. (The entirety of the document, as well as P-7 and those portions of the transcript of hearing conducted in closed session will be available for purposes of appellate review.)

ii. You did not adequately monitor the patient's condition,
iii. You delayed calling an ambulance following the patient's cardiac arrest,
iv. You did not accompany the patient to hospital despite her serious condition.

That letter invited a written explanation and alerted respondent to the possibility that the "Preliminary Proceedings Committee may wish to make an order for the interim suspension of your registration." A responsive submission, prepared by respondent's solicitor, was filed on his behalf on December 3, addressing the specific allegations. On September 1, 2000, the Interim Orders Committee imposed the following restrictions on respondent's registration for a period of 18 months:

(1) You shall practice anaesthetics only in supervised NHS (National Health Service) posts.
(2) You shall notify the Registrar of the GMC of any posts you undertake.
(3) You shall notify any employer or potential employer of these conditions.

The interim restrictions were reviewed on September 20, 2000 and December 19, 2000 and each time the restrictions were left in place. They were to be reviewed in March 2001.

Respondent was first licensed in New Jersey in August 1996, after completion of his residency training program at Albert Einstein Medical School in New York City. On September 29, 2000, respondent executed a biennial renewal application, and submitted it to *the* New Jersey Board.

The criminal trial commenced in January of 2001, resulting in a conviction on February 22, 2001, after 14 days of trial. On February 20, the judge summed-up the case for the jury. The sentencing judge stated:

> Richard Kaul, your conduct on that day, 9th March 1999, was a terrible lapse from your normal standards of professional care as testified to by your professional colleagues and by a number of former patients.

The judge noted that he was required to "mark this conduct with a sentence of imprisonment", ordering imprisonment for a period of six months, which was suspended for 12 months. The judge opined that he thought it unlikely that the doctor would commit another offense in those 12 months, and thus it was not likely that he would be imprisoned. In fact, respondent successfully completed the 12 month period without additional offense and did not serve the prison sentence.

On February 27, 2001 the FMC advised respondent that the interim restrictions remained in place, and reaffirmed the need to advise employers of those restrictions. On March 1, 2001, the GMC met and, after being advised of the conviction, "replaced" its previous order for conditional registration and entered an order of interim suspension.

In April of 2001, respondent took two steps demonstrating his intent to emigrate to New Jersey to begin practicing medicine. On April 8, 2001, he submitted an application for privileges to Hackensack University Medical Center and on April 27, 2001

submitted an application to obtain a controlled substance registration. On neither application did he provide any information concerning the events in Great Britain -- no mention of any restrictions, voluntary undertakings or the interim suspension of his license to practice medicine and no mention of his conviction for manslaughter.

In accordance with the applicable procedures of the GMC, respondent was notified by letter of November 22, 2001 that the GMC would be taking up consideration of the conviction at its January 11, 2002 meeting. Although respondent declined to appear, he submitted documents, and asked that he be allowed to continue to practice medicine in the future. In the packet of documents, respondent included ten statements dated January 8, 2002 , admitted into this proceeding as P-6, in which he addressed his culpability for the death of Mrs. Bangura. The "Key Points" of his "Speech to GMC" included the following:

> 1. ACCEPTANCE OF FULL RESPONSIBILITY FOR MARCH 9, 1999
> On the 9 March 1999 I had a duty of care to Mrs. Isatu Bangura, I was grossly negligent in delivering that duty and as a result Mrs. Bangura died. I accept full and total responsibility for my actions that day and accept without reservation the guilty verdict delivered on February 22, 2001 at the Central Criminal Court

He also offered what was described as an unreserved apology to family and profession. He "apolgised [sic] to the profession for not maintaining the standards that are to be expected of it's [sic] members" and for bringing the "profession into disrepute." In "Key

Point 3", he described the "mistake, how it was allowed to happen and it's [sic] consequences on Bangura family and myself":

> On the 9th March 1 made a grave mistake which had fatal consequences. As a human being we all make mistakes and all I believe that can be asked of us is that whatever we do we always try our best. However on that day I did not try my best and consequently made an avoidable mistake. . . . A brief period of inattention led *to* another person's demise. Every day since it's happened I've thought about my actions and about how if only I had done my job properly that day Mrs Bangura would still be alive.

He maintained that the experience had caused him to develop a "greater sense of responsibility" and served as a reminder that "I'm in a field that requires vigilance at all times." In his identification of the "Lessons that I Have Learnt", he acknowledged that he had "allowed himself to be distracted at a crucial moment."

Review of *the* transcript of the meeting of the Professional Conduct Committee of the GMC on January 11, 2002 (P-15) reveals that the proceedings were adjourned so that additional materials could be provided to the members. The Committee left in place the suspension that had been set forth in its interim order. It reconvened for the finalization of the matter on May 30, *2002.* By order of that same date, respondent's license was "erased", and no reapplication could be entered for a period of 5 years. The Order included the following determinations:

> The hypoxic brain injury and cardiac arrest were caused by Dr Kaul's failure adequately to monitor Mrs B's blood oxygen level which had fallen during treatment. This

> failure amounted to gross negligence. . . . It is clear that Mrs B was heavily sedated. Apart from the need for the careful monitoring of any patient while under sedation, there was a need for additionally care in the case of Mrs. B because she suffered from obesity. The conviction demonstrates that Dr Kaul failed adequately to monitor Mrs B's condition, with tragic consequences.

The Committee's determination further reflects that it had reviewed the full transcript of the judge's summing up and had taken into account respondent's statements accepting responsibility and showing remorse. It stated:

> The circumstances of Dr Kaul's conviction of the offence of manslaughter demonstrated not only gross negligence on his part but a grave departure from the standards which the public has a right to expect of members of the medical profession, as Dr Kaul himself acknowledges. The Committee are satisfied that neither conditions nor a further period of suspension from practice would be sufficient to meet the gravity of the offence Dr Kaul committed, or to protect the public interest in the way they have described. The Committee have accordingly concluded that they have no option but to direct the Registrar to erase Dr Kaul's name from the Medical Register.

That determination was conveyed to respondent by letter of May 30, 2002.

During his testimony before the Board at the April 9, 2003 hearing, respondent was considerably less forthcoming concerning his own culpability than in his statements before the GMC. He was asked by a Board member if there were any aspects of the care that he provided to Mrs. Bangura that he would change, if he had the chance. He conceded that he would have gone with the patient in the ambulance, and later acknowledged that he would have called for

the ambulance sooner. In his testimony before the Board he did not acknowledge that any inattention on his part was a contributing factor to Mrs. Bangura's death. En fact he retrenched from the statements filed with the GMC, ROW maintaining that they had been provided on advice of counsel to show contrition and acceptance of responsibility.

THE PROCESS DUE

This matter arises before the Board as one of the first "derivative" actions to be finalized after the New Jersey Supreme Court's decision in IMO Andrew Fanelli, 174 N.J. 165 (2002). While clearly requiring the Board to undertake a greater scrutiny of the "core facts" upon which the initial action had been predicated, we are loathe to conclude that the Supreme Court intended the Attorney General to be put to the burden of retrying *a* case emanating from another jurisdiction or criminal forum. Nor does it seem from a careful reading of the Fanelli decision that the Board would be expected to abandon its longstanding practice (shared by other agencies responsible for the regulation of various professions, including the Supreme Court) of not permitting litigants to *"go* behind" a conviction. Here we have endeavored to pay heed to the messages of Fanelli and strike the balance in a manner that affords the respondent assurance that the Board will give careful scrutiny to the nature of and basis for that proceeding conducted elsewhere, without unduly undermining the Legislature's intention that a

regulatory agency act with expedition when learning of actions taken against those who have had their opportunity for due process safeguarded in another venue.

Because the underlying issues implicate professional standards, there is a clear need to understand how the conduct was addressed in the other forum. That need however, should not serve as a springboard for launching the Board into a full blown retrial of medical issues. Respondent sought to have the Board hear testimony from two experts, Drs. Goldiner and Saubermann, who by necessity would have offered a view based on a version of events relayed by respondent, as supplemented by the record abroad. We are fortunate to have had available for our review the account of the evidence embodied in the judge's summing up and the packets of expert statements prepared by the prosecution and the defense. In addition, we have the transcripts of two meetings of the GMC committee handling the case. It is obvious that the GMC approached its task with great care. Indeed, it was intent on having an understanding of the basis for the conviction that the Fanelli court now requires of this Board. From this record, we are certainly able to recognize the conflicting positions at trial, have an appreciation for the thoroughness of the process and develop understanding of the meaning of the verdict. In keeping with our post-Fanelli charge, the recordbefore us has well-enabled us to discern the "core facts." To have allowed the record to be

supplemented by new expert testimony would not have assisted in understanding the basis for the determination in the other forum, and in our view, would have only served to place the State in an untenable responsive position.

THE BASES FOR DISCIPLINE

The POD, and the subsequently-filed supplemental charges, articulate four independent bases[7] upon which discipline against respondent's New Jersey license could be predicated.

1. The Crime - N.J.S.A. 45:1-21(f) - Respondent has repeatedly argued that the POD in its entirety should be dismissed because the criminal conviction was an insufficient predicate.[8] First, he argues that the criminal pursuit was a politically motivated vendetta orchestrated by a colleague who was miffed that he had sought to rely on credentials earned in the United States for admission to the Royal College of Anaesthetists. The Beard rejects this contention; our review of the documents relating to the

[7] A fifth basis was set forth in the supplemental charges. At the time of hearing, the Attorney General made clear that the State was not alleging a present incapacity to practice, and in fact stipulated as *to* the doctor's present fitness. Thus no exposition with regard *to* these issues is necessary here; any facts relating to this issue are dealt with in Attachment 3 - a Sealed Addendum to this Order.

[8] While Board first rejected the argument at the December 19 meeting, its subsequent adherence to that ruling should not be viewed as dismissive treatment. The Board asserted then that it would deal with the issue in the context of the case on the merits. Repetitive filings of the same arguments *do* not make them more compelling on reprise.

proceedings in Britain demonstrate a deliberate and careful evidentiary process. Even though respondent chose not to attend the proceeding, the Committee *directed staff to supplement the record to assure that a full understanding of the factual background was obtained and made certain that the respondent was apprised of the change in course.

Respondent asserts that his conduct, even if it occurred as was found by the jury, would never have given rise to a criminal proceeding in the United State. Rather, he maintains that it would have been handled as a malpractice action. Although pursuit of physician conduct through criminal charges is not unheard of in the Untied States, the Board is mindful of the fact that such handling is rare. (It should be noted that at the proceeding before the GMC, the solicitor who presented the matter offered an observation that criminal pursuit of physicians for gross negligence was rare in Great Britain as well.)

Of more compelling concern to the Board is respondent's argument that the conviction itself cannot serve as a predicate because it resulted from an eleven to one jury verdict. Respondent maintains that the protection of a unanimous jury verdict is of such a constitutional dimension that its absence makes the conviction void, We can envision circumstances wherein the New Jersey public would be deprived of significant protection were this conclusion to be made as a matter of law. The force of law in the

foreign jurisdiction operates to protect its citizens from one convicted under a system of jurisprudence with traditions divergent from ours. We are troubled by a rule that would preclude the Attorney General from seeking similar protections for our citizens, Moreover, the burden of establishing the underlying facts of a case may be even more arduous when seeking access to documents and witnesses in a foreign jurisdiction. Despite our concerns, we feel unprepared to declare which procedural attributes of the criminal justice system in the United States might warrant comparable handling. Because there are independent bases upon which to proceed in this matter, the Board has concluded that it would not rely on the conviction qua conviction. Accordingly the Board has determined to dismiss that portion of the POD which asserts a basis for discipline by virtue of the entry of the conviction.

The Board has scrutinized the record of the criminal proceeding and concludes that the findings of the jury -- even though delivered *as* an eleven to one verdict -- are meaningful and germane to *its* task.

The judge provided the jury with an extensive narrative, describing the evidence adduced during the fourteen days of trial.(P-11) He specifically identified the elements of the crime that the prosecution was required to prove: 1) the defendant owed a duty of care to Mrs. Bangura, 2) the defendant breached that duty of care, 3) the breach was a substantial or significant cause of

her death and 4) that the "breach of duty was sufficiently grave to amount to gross negligence. . . . so serious and showing such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment." The judge made clear that the prosecution had the burden and that before the jury could convict it "must be satisfied of guilt so that you feel sure about it."

The "summing-up" then recounts several disputed issues at trial. The judge recounted that one of the witnesses, the dental assistant, who had been present on March 9, 1999, had testified that, when the surgery was done, and the dentist left the room, respondent had been facing towards the window, away from the patient, on a mobile phone, "for something like two to three minutes." The defense had produced evidence that the mobile phone registered to respondent did not show any record of calls at during the relevant time period. The dental assistant also had testified that respondent had told her to press the button on the monitor to stop its beeping. The assistant was not qualified as a dental nurse, and unfamiliar with responsibilities associated with monitoring anesthesia. There was also a dispute at trial as to the level of sedation in use; the prosecution postulating that it approached the level of general anesthesia (which respondent was not authorized to give). The prosecution further maintained that the respiratory depressive effect of the agents used was heightened

by the fact that the patient was obese. Respondent asserted that the combination of medications administered was recognized and not contraindicated for a patient of Mrs. Bangura's weight. He testified that the patient was able to respond to stimuli during the procedure and thus was not as heavily sedated as the prosecution would have had the jury believe. Descriptions were provided by the escorts for other patients as to the condition of discharge being suggestive of a deeper degree of sedation, in that they could not ambulate independently and needed to be carried or supported. Divergent opinions were offered as to the actual cause of death, by a number of experts on both sides. All credited respondent with having appropriately conducted resusitive measures; although the time gap before the ambulance was called was an issue. There was also a dispute as to whether respondent was told by the paramedics that: he did not need to come with the patient to the hospital; there was no dispute as to the fact that he did not accompany the patient.

One passage in the summing up is particularly relevant to an understanding of the import of the jury verdict. (P-11, page *89)*

> You, as a group of ordinary intelligent citizens have to ask this question; "Having considered all the evidence including but not limited to the medical evidence, are you sure - are we sure that Mrs Bangura's cardiac arrest stems from hypoxia or, put it another way, respiratory depression?"
>
> If you are not sure of that, if you think that it may be that the cardiac arrest was caused by low

> potassium or infection or both or by some wholly unexplained cause, then the defendant is not guilty.
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> If, on the other hand, *you* are sure that the cardiac arrest resulted from hypoxia, then *you* have to ask, "Why did the defendant fail to notice that?", and if *you* are driven to the conclusion that the only explanation for the failure is that he was not monitoring his patient properly, then the only remaining question is this: Does the failures to monitor amount to gross negligence?" in the way that I have explained to you.
>
> If you are sure that it does, then he is guilty *as* charged.

Thus, by returning a verdict of guilty, albeit by less than a unanimous vote, the jury found that the respondent had engaged in gross malpractice -- a finding that could be supported in a New Jersey courtroom in a civil case by a jury of six (R.1-8-2(b)), or a less than unanimous jury (R. 1:8-2(c) (1)). While the Board will not find basis for discipline pursuant to N.J.S.A. 45:1-21(f), it cannot ignore that the criminal process generated a finding worthy of trust.

2. The Licensure Erasure - N.J.S.A. 45:1-21(g)

Because the GMC relied on the criminal conviction, which he maintains *is* void, respondent would have the Board ignore the erasure action, a determination having the effect of a revocation. Alternatively, respondent argues that the Board cannot rely on the British action because it is not one arising in a "sister state." We were never "sisters", counsel argues, and since the American Revolution, and our emancipation ***from*** the "Mother Country", we do

not share filial kinship, or similar legal systems. History lessons notwithstanding, "sisterhood" is not a statutory prerequisite for reliance of the decision of other jurisdictions. N.J.S.A. 45:1-21(g) provides that a board may take disciplinary action against the holder of a license who:

> Has had his authority to engage in an activity regulated by the board revoked or suspended by another state, agency or authority for reasons consistent with this section.

The erasure of respondent's registration by the GMC for reasons based on a conviction, arising in circumstances found to have involved gross negligence, provides a sufficient predicate for action by this Board. And indeed a review of the record before the GMC compellingly demonstrates that respondent's case was carefully, thoughtfully and fairly dealt with by the licensing authority. Not only was respondent provided with notice of the charges, specifically delineating breaches that would give rise to professional discipline, and an opportunity to be heard, the GMC refused to rely en the bald-faced fact of the conviction. A time-limited interim suspension was in place at the time that the conviction was returned. On January 11, 2002, the Professional Conduct Committee met to consider what action to take with respect to respondent's registration. The transcript: of its proceeding on that day reveals that the members declined to move the case to closure on that date. They made certain that respondent had had

notice of the proceeding, took due note of *the* doctor's o w written submissions and the "bundle" of testimonials, but still expressed reluctance to make a final determination as to the consequences that should result Erom the conviction without a better understanding of how respondent's actions deviated from professional standards. One member recused himself after he realized that he had familiarity with respondent's challenge to the decision of the Royal College of Anaesthetists. The proceeding was adjourned and the Committee directed that respondent be notified that it would be securing underlying evidence from the criminal proceeding and the criminal judge's summing-up.

The Committee reconvened on May *30,* 2002. Respondent again submitted a letter reflecting that he was aware of his right to be present, that he had been provided with the documents that would be made available to the Committee, and that he would be declining to appear. The Committee has requested the production of the expert reports that had been part of the criminal proceeding, and it accepted respondent's own statements acknowledging responsibility €or his breaches. Its determination on "erasure" thus was not grounded solely on the conviction, but on its independent review of the underlying evidence and respondent's own statements. That respondent now tries to step back from his own expressions of accountability and remorse only heightens the Board's concern about his record of forthright dealings with regulatory authorities and

employers. The licensing authority in Britain had every right to rely on the truthfulness of his statements, and the GMC's decision in the face of the evidence before it was entirely appropriate. Respondent's inattention to his patient on March 9, 1999, constituted gross negligence and was an ample predicate for the discipline entered. The action of the GMC is clearly that of another licensing authority on which the Legislature intended that the Board would be able to rely. (The determinations of the GMC relating to professional standards are more fully explicated in the discussion of gross negligence below.)

3. **Multiple Misrepresentations - N.J.S.A. 45:1-21(b)**

On multiple occasions, respondent failed to answer truthfully in response to questions posed to him in various credentialing applications. In his testimony before the Board, respondent maintained that he was under the assumption that the questions on these applications sought information only concerning actions in the United States. His rationale was grounded on his understanding that the two medical systems were not reciprocal; a conclusion he had come to because the Royal College of Anaesthetists had not accepted his attainment of board certification in the United States as an equivalency to the British training regimen. His argument is more convenient that sound; there was nothing ambiguous or subject to interpretation with respect to questions pertaining to criminal charges or licensure actions. It simply strains credulity to

believe that respondent thought that the Board and the credentialing personnel at Hackensack University Medical Central would not be interested in knowing about convictiens and licensure actions that occurred abroad, when nothing *in* the phrasing of the questions suggested such limitations.

a) The Hackensack University Medical Center Application (attached to the POD) - On April 8, 2001, in executing an application for privileges at Hackensack University Medical Center, respondent checked the "NO" box next to the following question:

> Please indicate if you have ever been convicted of any criminal offense, excluding minor traffic violations, e.g. passing a stop sign, (If *yes*, give details on a separate sheet)

Having been convicted of criminal manslaughter on February 22, 2001, this response was false. He also checked the "NO" box, next to these questions:

> Have your privileges or medical staff membership at any hospital ever been voluntarily or involuntarily suspended, diminished, revoked or not renewed? (If *yes* please explain on a separate sheet.)

The record supports a finding that respondent's employment was suspended from Highgate Private Hospital in or about August of *1999.* Accordingly, this answer was false. He also checked the "NO" Box next to the following question:

> Has your license to practice medicine, dentistry or podiatry, in any jurisdiction, ever been voluntarily or involuntarily relinquished, stayed, limited, suspended, denied, revoked or subject to any restrictions or

probation? (If **Yes, explain in** full **detail on** a **separate** sheet.)

On March 1, 2001, the GMC **entered** an order of interim **suspension, replacing** *its* prior order of **practice** restrictions. **Moreover,** specific restrictions **had** been **placed** on **his license by** virtue ***of*** **the voluntary undertaking** he had **signed on June 21,2000. Those conditions remained** in force **until October** 22, 2001. ***(See*** **the** Attachment *3* - **Sealed Addendum** for **details). Respondent's** license to practice in Great Britain **was suspended at** the **time he** answered in the negative, and **in** fact at that time had been **subject to restrictions** for almost **a year.**

b) The CDS Registration

Respondent executed an **application** for **a** controlled dangerous **substance** registration on **April 27, 2001.** The **following** questions **appeared on** that **application:**

> *(a)* Has any **restriction been imposed** which would affect **your** privileges to **hold** a CDS registration for **Schedule** II, III, IV or V **substances** in **this** state or any other jurisdiction?
>
> (b) **Have** *you* ever **been** arrested, indicted, or **convicted** of **a** crime in **connection with** controlled **substances under state or** federal law?
>
> (c) **Rave you** ever surrendered **a controlled drug** registration or had **a** controlled drug registration **revoked, suspended** or denied **in any** state, **or** jurisdiction?

Although his conviction did **involve controlled substances** (fentanyl and midazolam), there **was no** restriction imposed **on his prescribing**

of which the Board is aware, nor was the conviction "under state or federal law". Technically his responses were accurate and should not give rise to discipline. (Although GMC's interim order, entered on September 1, 2000, imposed restrictions that would likely have affected his right to hold a CDS registration, the phrasing of the question (a) places a burden on the respondent to speculate as a result.) Certainly a better course would have been to explain the circumstances, but we decline to find the failure in response to these questiond to form an independent basis for discipline.

c) The 2000 Biennial Renewal (P-22)

On September 9, 2000 respondent submitted a biennial renewal form to the New Jersey Board. Notwithstanding that he was arrested and charged with gross negligence/manslaughter in the death of Mrs. Bangura on October 15, 1999, respondent checked the "No" box in response to the following question:

> Are there any criminal charges against you now pending (parking or speeding violations do not require you to answer "Yes" but all other motor vehicle offenses must be disclosed)?

We can discern no way by which respondent can legitimately rationalize his response to this question. He also answered in the negative to the question as to whether any health care facility had taken action against his privileges or membership right. As noted above, the record supports a finding that his privileges at Highgate Private Hospital were suspended in or around August of

1999. Other answers to the questions on page 5 of the application are addressed separately in Attachment 3.

Respondent also checked the "No" box in response to the following questions:

> Has your professional license been revoked or suspended (whether active or stayed) by any licensing board?
>
> Is there any action now pending against your professional license or have you been permitted to surrender or otherwise relinquish your medical license to avoid inquiry, investigation of action by any state licensing board?

While the GMC placed clear limitations on his practice by its order of December 14, 1999, which were extended by order of December 2000, these were not framed as a suspension, until the Interim Order of March 1, 2001. While a wiser course would have led respondent to have disclosed the GMC proceedings, based on a strict construction of this question, respondent's answer cannot be viewed as a misrepresentation. Such a parsing approach arguably validates his responses to the questions pertaining to controlled dangerous substances and the limitations on licensure.

d) The St. Clare's Application - (P-25)

As part of his September 11, 2002 application for privileges at St. Clare's, respondent submitted information pertaining to the criminal action and licensure erasure in Great Britain, as well as an extensive narrative, dated October 22, 2002, prepared by present counsel, offering an account of what transpired in England.

Notwithstanding his apparent forthright revelation of the conviction and erasure, he checked the "No" space for the following questions:

> **10.2** Are you aware of any action pending against you or any investigation in progress by a state licensing board?
>
> and
>
> **10.14 Is there any investigation** regarding your **practice** of medicine currently in **progress?**

These negative responses were provided less than one month after after respondent had executed a response to the New Jersey Board's Demand for Statement in Writing Under Oath, on August 16, 2002. In addition, he answered in the negative to the following question:

> **10.8** Have your clinical **privileges** ever been voluntarily or involuntarily withdrawn **or curtailed** after having **been granted?**

No express mention is made of either the Highgate Private Hospital suspension, nor the the Hackensack University Medical Center suspension made effective on November 30, 2001.[9]

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[9] Also of note, respondent's application itself refers to an attached curriculum vitae in response to those spaces seeking information about practice affiliations. Blank forms are then forwarded to .those identified as representatives of the institutions with which the applicant has been affiliated. With respect to Hackensack University Medical Center, respondent's curriculum vitae expressly directs the reader to contact Mark Schlesinger, M.D., and even provides his phone number. Included within P-25 is a form signed by Dr. Schlesinger, who was identified as an Attending Physician at Hackensack, where respondent worked from October 2001 through December of 2001. Although respondent's privileges at that institution were suspended on November 30, 2001

By affixing his signature to the form he certified that he would notify St. Clare's of any changes that occurred before his application was acted upon and expressly agreed "to keep St. Clare's Hospital representatives informed of any changes made or proposed in the status of my professional license to practice, DEA or other controlled substances registration, and malpractice insurance coverage". Indeed, his attorney's letter of October 22, 2002, written to provide Maxine Persson, Chief Administrator of Medical Staff Affairs, "with a history and explanation concerning Dr. Richard Kaul's experiences with his medical and practice activities", neglected to mention the pending POD filed on September 20, 2002. It is only by his follow-up letter of October 25 to Ms. Persson that he alerts her to the fact that the Medical Board is aware of the "circumstances in the United Kingdom." He advised that "we will interact with the Board to clarify Dr. Kaul's situation vis a vis the patient, Isatu Bangura." Nothing would

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"because of acknowledged misstatements and omissions on his application", Dr. Schlesinger makes no mention of this fact, rates respondent's performance as excellent in all categories (including ethical conduct), and declines the opportunity to provide more information to St. Clare's by telephone. In response to question 10.6 seeking information concerning suspensions of clinical privileges at hospital, respondent refers to "attached documents." Yet there seems to be no further explanation concerning the suspension at Hackensack anywhere within the St. Clare's credentialing file.

have alerted St. Clare's to the pendency of disciplinary charges filed before the Board by way of the September 20, 2002 POD.

These misrepresentations were not alleged in either the POD or in the supplemental charges. They do not provide basis for any specific penalty; however, they do illustrate the same willingness to undermine an important hospital function -- credentialing -- even after he had supposedly learned his lesson and committed to providing complete and truthful information in response to inquiries by institutions and agencies.

e) The 2001 Biennial Renewal - (P-23)

No allegation in the POD or the supplemental charges relate to the 2001 renewal. It cannot independently provide a basis for discipline. The document, however, makes it evident that respondent had not yet seen the error of his ways on May 3, 2001; again he answered "No" to the question "Have you been convicted?"; again he answers "No" to the question "Has your professional license been revoked or suspended (whether active or stayed) by any licensing board?" To the extent that a time would come when respondent would elect to be more forthcoming, it did not apparently arrive until after his receipt of the Demand for Statement in Writing Under Oath in August of 2002, with the realization that he would called upon to disclose the events that had occurred in England.

4. The Underlying **Gross Malpractice - N.J.S.A.** 45:1-21(c)

As noted in **the analysis of** the **jury verdict, there was a conclusion** reached by eleven jurors that **respondent's care of** Mrs. Bangura exhibited gross **malpractice.** That **finding is** further **buttressed** by the determination **of the GMC** that professional **standards** had been breached. It expressly found:

> **The** hypoxic brain injury and the **cardiac** arrest were caused by Dr. **Kaul's** failure ***to*** **adequately** monitor Mrs B's blood **oxygen** level **which** had **fallen** during her treatment. **This failure** amounted to **gross negligence. It** is clear **that** Mrs B **was** heavily **sedated, Apart** from the **need €or** the **careful monitoring *of* any patient** while under sedation, there **is a** need **for** additional **care** in the case of Mrs B **because** she **suffered** from obesity.

In applying its own **expertise** to this record, this **Board** can only echo the concerns of our British counterpart. Vigilance when a **patient** is **deeply sedated** is essential; even more *so* than when a **patient** is **under** true general **anesthesia** with intubation. Direct observation during dental surgery is made even more critical because ***of*** the difficulty **in observing** the mouth, as it is the surgical site, the focus of all the action. **We** accept and fully understand the determination of the **GMC** that respondent's gross **negligence** was **a** "grave departure from the standards which the **public has a sight to expect** of **members of** the medical. profession."

While basis **exists** to ground **discipline** on **N.J.S.A.** 45:1-21 (c), it is **a finding** that merges with our conclusion that basis exists to rely on the **erasure by** the GMC. **Were** that ground not

available, the underlying facts as found by the GMC would provide independent basis to support the Board determination.

MITIGATION EVIDENCE

Respondent presented three witnesses during the mitigation phase of the hearing. David Lundquist, the Chief Executive Officer at St. Clare's Hospital, testified both as a current employer/colleague and as a patient, remarking that the institution has been very pleased that respondent has established a pain management service that is growing and meeting the needs of the community.[10] He noted physician colleagues and nursing staff have been complimentary, feeling that "he *goes* the extra mile with the patients." Mr. Lundquist also testified that respondent had been "very open from the very start" concerning "what had transpired when he was in the UK."

Two patients echoed Mr. Lundquist's remarks; Anthony Kopf and Robert Gordon. Both described marked improvement in their medical conditions since beginning treatment with respondent. Both remarked on respondent's willingness to listen to patients. Each had given up the entire day to come to the Board meeting to show support for respondent. The Attorney General accepted, and the Board noted, that there were many other "very . . . dedicated

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[10] At respondent's request and with the consent of the Attorney General, the Board agreed to take Mr. Lundquist's testimony out of order - before a determination had been made as to whether there was a basis for discipline - because of a scheduling conflict.

mitigation witnesses who spent the better part of the day waiting to appear before the Board." Indeed, it was conceded that "if they had been called to testify, they would' have echoed the appreciation" of respondent's medical ability. We note as well that the record includes the "testimonial bundle" which had been submitted in the criminal and licensure matters in England, comprised of the supportive statements of more than 30 colleagues and patients.

The original POD had sought to impose a licensure suspension until such time as his privileges were restored in England. Pursuant to the terms of the GMC action respondent could not seek restoration of those privileges until. 2007. Thus the initial proposed penalty would have kept respondent out of active practice for at least four years. For his part, respondent has asked this Board to impose no period of active suspension, maintaining that such a result would serve no purpose. We disagree.

The Board does not doubt that respondent has the interactive skills and the compassion to be a good physician. The incident that gave rise to criminal charges in England, if one accepts the judge's observations and respondent's own acceptance of responsibility, 'represents a lapse of tragic consequence, deserving of sanction. But it was described throughout as a mistake, not deliberate, which with due attentiveness, is unlikely to be repeated. What the record before this Board calls into question is respondent's integrity. Respondent continues to lack insight into

the role that licensing and credentialing authorities must play -- he does not get to write the rules, or read them selectively to shield his conduct from scrutiny. Neither semantic gymnastics nor contrived contrition serve the process -- or respondent -- well. Counsel argues that respondent may have provided different answers to the questions on these applications if he had sought counsel. Board licensees committed to truthful dealing with regulators and employers do not need attorneys to assist in answering straightforward, unambiguous questions 'or in constructing post-hoc rationalizations as to their jurisdictional reach. Respondent would do well to reflect on the role that regulatory bodies play and the need that they have to repose trust in those to whom they have given the privilege to practice. Although the Board grounds its action today on the determination by its counterpart in Great Britain, as well as on the many misrepresentations revealed in a careful review of the record, the suspension ordered here would be fully supported on the basis of the misrepresentations alone. Likewise the monetary penalties could well have been assessed for the underlying gross negligence and each misrepresentation. The Board has eschewed a more stringent penalty with the hope and expectation that respondent will resolve to practice with the vigilance that he has promised. He must also resolve to deal forthrightly and honestly with this Board, *his* employers and hospital and insurers. Future transgressions will not be deserving of leniency. Our expectations for the strictest of compliance with

the standard of care and the ethical tenets of the profession will be at the highest level.

ACCORDINGLY, it is on this 19th day of May, ORDERED.

1. Respondent's license to practice medicine and surgery in New Jersey shall be and hereby is suspended for a period of two years, the first six months of which shall be served as an active suspension, during which respondent shall be barred from engaging in any practice. During the remaining 18 months, respondent shall be on probation. No time shall count towards the *six* month period of suspension if respondent is practicing in any jurisdiction, in the United States or abroad. The suspension shall be effective on the date of the entry of this order, which has allowed respondent more than one month to wind down his practice, since he was orally advised of the Board's decision.

2. Respondent shall pay a penalty in the amount of $10,000, within thirty days of the entry of this Order or subject to such plan for payment as may be approved by the Board.

3. Respondent shall pay the State's costs within thirty days of the entry of this Order, to include costs of investigation and attorney fees associated with the prosecution of the matter, or subject to such plan for payment as may be approved by the Board. The Attorny General shall submit an affidivit detailing the costs, with ten days of the entry of this Order.

4. **Before** any return to **practice respondent shall** demonstrate **successful** completion of **an** ethics **course, approved** in **advance** by the Board.

NEW **JERSEY'STATE BOARD** OF MEDICAL **EXAMINERS**

BY: _____

Glenn A. Farrell, Esq.
Board Secretary

For: William V. Harrer, M.D.
Board President

Attachment 1 - Catalogue of Correspondence

1. Letter from Susan Volkert, Esq., to William Roeder, Executive Director Board of Medical Examiners, Assistant Attorney General Sharon Joyce and Deputy Attorney General Jeri Warhaftig dated April 8, 2003 (received after the hearing).

2. Letter from Assistant Attorney General Sharon Joyce to Susan Volkert, Esq. and Deputy Attorney General Jeri Warhaftig dated April 8, 2003 relating to previous ruling concerning the motion to supplement and Lundquist's testimony.

3. Letter from Assistant Attorney Sharon Joyce to Susan Volkert, Esq., and Deputy Attorney General Jeri Warhaftig dated April 8, 2003 regarding Goldiner testimony.

4. Letter from Susan Volkert, Esq., to William Roeder, Executive Director, Board of Medical Examiners dated April 7, 2003.

5. Letter from Susan Volkert, Esq., to Assistant Attorney General Sharon Joyce dated April 7, 2003.

6. Letter from William Roeder, Executive Director, Board of Medical Examiners to Susan Volkert, Esq., and Deputy Attorney General Jeri Warhaftig dated April 7, 2003.

7. Letter from Deputy Attorney General Sandra Dick to Susan Fruchtman, Esq., dated April 4, 2003.

a. Letter from Susan Fruchtrnan, Esq., to Deputy Attorney General Sandra Dick dated April 4, 2003.

9. Letter from Deputy Attorney General Sandra Dick to Susan Volkert:, Esq., and Deputy Attorney General Jeri Warhaftig dated April 3, 2003.

10. Letter from Deputy Attorney General Jeri Warhaftig to William Roeder, Executive Director, Board of Medical Examiners dated April 3, 2003.

11. Letter from Susan Volkert, Esq., to Assistant Attorney General Sharon Joyce and Deputy Attorney General Sandra Dick dated April 2, 2003.

12. Letter from Susan Volkert, Esq., to William Roeder, Executive Director, Board of Medical Examiners dated April 2, 2003, with the attached certification of Paul Goldiner, M.D.

13. **Letter** from Deputy **Attorney General Jeri Warhaftig to Susan** Volkert, **Esq., , 'datedApril 1, 2003 beginning** "I am in **receipt** of **your** fax of **today's date".**

14. **Letter** from **Susan Volkert, Esq.,** to **Assistant Attorney General** Sharon **Joyce dated April 1,** 2003.

15. Letter from Deputy **Attorney General** Jeri **Warhaftig** to **Susan** Volkert, Esq., **dated April 1, 2003 beginning** "I am in receipt **of your** faxed **correspondence** of March 28".

16. Letter from **Assistant** Attorney **General** Sharon **Joyce** to Susan **Volkert,** Esq., Deputy Attorney General Alan **Niedz,** and **Deputy** Attorney General Jeri Warhaftig **dated** March **31,** 2003.

17. Letter from Susan Volkert, Esq., to Deputy **Attorney** General **Alan Niedz** and **Deputy Attorney General** Jeri **Warhaftig dated** March 28, *2003.*

18. **Letter from Deputy Attorney** General Jeri **Warhaftig** to Members of **the** Board dated March *25,* 2003.

19. Letter **from Deputy Attorney General** Jeri **Warhaftig to** Executive Committee Members **of** the Board of Medical **Examiners** dated March 24, 2003.

20' Letter from **Assistant Attorney** General **Sharon Joyce to Susan Volkert,** Esq., and **Deputy Attorney General Alan Niedz** dated March 20, 2003.

21. Letter from Assistant: **Attorney** General **Sharon** Joyce to **Susan Volkert,** Esq., and **Deputy** Attorney General **Alan Niedz** dated March 21, 2003.

22. Letter from **Susan** Volkert, Esq., **to** Assistant **Attorney** General **Sharon Joyce dated** March **13,** 2003.

23. **Letter** from Assistant **Attorney** General Sharon **Joyce** to **Susan Volkert,** Esq., **dated** March **13,** 2003.

24. **Letter** from **Susan Volkert,** Esq., to Assistant **Attorney** General Sharon **Joyce dated** March 11, 2003.

25. **Letter** from **Susan** Volkert, Esq., to Bill Roeder, Executive **Director, Board of Medical** Examiners dated March 11, 2003, **with accompanying** Renewed Request to Dismiss the **Attorney General's Complaint.**

26. Letter from Deputy Attorney General Alan Niedz to Members of the Board regarding objections to witnesses dated March 4, 2003.

27. Letter from Deputy Attorney General Alan Niedz to Members of the Board of Medical Examiners regarding responses to evidence to objections to evidence dated March 4, 2003.

28. Letter from Deputy Attorney General Alan Niedz to Members of the Board of Medical Examiners regarding responses to objections to the motion to supplement the charges dated March 4, 2003.

29. Letter from Susan Volkert, Esq., to Bill Roeder dated March 3, 2003 to which was attached Attachment 1 Witness List, Attachment 2 Evidence, Attachment 3 Response to Supplemental Charges.

30. Letter from Assistant Attorney General Sharon Joyce to Deputy Attorney General Alan Niedz and Susan Volkert, Esq., dated February 14, 2003.

31. Letter from Deputy Attorney General Alan Niedz to Susan Volkert, Esq., dated February 14, 2003.

32. Letter from Susan Volkert, Esq., to Deputy Attorney General Alan Niedz regarding an evaluation conducted by Louis Baxter, M.D. dated February 11, 2003.

33. Letter from Susan Volkert, Esq., to Deputy Attorney General Alan Niedz regarding objections to the motion to supplement the charges dated February 11, 2003.

34. Letter from Susan Volkert, Esq., to Deputy Attorney General Alan Niedz dated February 7, 2003.

35. Letter from Deputy Attorney General Alan Niedz to Susan Volkert, Esq., dated February 6, 2003, with attached Motion to File Verifies Supplement to Charges and supporting certifications.

36. Letter from Deputy Attorney General Alan Niedz to Susan Volkert, Esq., dated February 5, 2003.

37. Letter from Susan Volkert, Esq., to Deputy Attorney General Alan Niedz dated February 4, 2003.

38. Letter from Susan Volkert, Esq., to William Roeder, Executive Director, Board of Medical Examiners dated February 4, 2003.

39. **Letter** from Deputy **Attorney** General **Alan Niedz** to Susan **Volkert, Esq.,** dated January **28,** 2003.

40. Letter from Deputy **Attorney** General **Alan** Niedz to Susan Fruchtman, Esq., **dated January 23, 2003.**

41. Letter from **William** Roeder, **Executive** Director, Board of **Medical** Examiners *to* **Anthony** F. **LaBue,** Esq., and Deputy **Attorney** General **Alan Niedz** dated January **3,** *2003.*

42. **Letter** from Anthony **F.** LaBue, Esq., **to William** Roeder, **Executive** Director, **Board** of Medical **Examiners, dated** January 2, *2003.*

43. **Letter** from **Anthony** F. **LaBue,** Esq., **to** William **Roeder, Executive Director,** Board of Medical **Examiners,** dated December *30,* 2002.

44. **Letter** from **Deputy Attorney General Alan** Niedz to **William** Roeder, **Executive** Director, Board of **Medical** Examiners dated December *30,* 2002.

45. **Letter** from **Deputy** Attorney **General Alan Niedz to William** Roeder, Executive Director, **Board** of **Medical** Examiners dated **December** 27, 2002.

46. Letter from Anthony F. Labue, Esq., to Deputy **Attorney** General **Alan** Niedz dated December 26, *2002.*

47. **Scheduling Order of** the **Board** dated **December** 20, 2002.

48. **Letter from** Deputy **Attorney** General Alan Niedz **to** William **Roeder,** Executive Director, Board of **Medical Examiners** dated **December** 16, 2002.

49. Letter from Anthony LaBue, **Esq., to** William Roeder, Executive Director, Board of Medical Examiners dated **December** 6, 2002 concerning the motion **to** dismiss **and to** strike the **POD** and certification.

50. Letter from Anthony F. LaBue, **Esq.,** to William Roeder, Board of Medical. Examiners **regarding additions** to *the* **POD** dated **December** *6, 2002.*

51. Letter from Deputy **Attorney** General **Alan Niedz to Members of** the **Board** dated December 5, 2002.

52. Letter from Deputy **Attorney** General. **Alan** Niedz to **William** Roeder, Executive Director, **Board of Medical Examiners** dated

December 4, 2002, with attached certification and Exhibits A through H.

53. Letter from William Roeder, Executive Director, Board of Medical Examiners to Anthony F. LaBue, Esq., and Deputy Attorney General Alan Niedz dated November 27, 2002.

54. Letter from Deputy Attorney General Alan Niedz to William Roeder, Executive Director, Board of Medical Examiners dated November 22, 2002.

55. Letter from Anthony F. LaBue, Esq., to Deputy Attorney General Debra Levine dated November 21, 2002.

56. Letter from William Roeder, Executive Director, Board of Medical Examiners to Anthony F. LaBue, Esq., and Deputy Attorney General Alan Niedz dated November 19, 2002.

57. Letter from Susan Fruchtman, Esq., to Deputy Attorney General Michelle Albertson, dated November 35, 2002.

58. Letter from William Roeder, Executive Director, Board of Medical Examiners to Anthony F. LaBue, Esq., dated November 12, 2002.

59. Letter from Anthony F. LaBue, Esg., to William Roeder, Executive Director, Board of Medical Examiners dated November 11, 2002.

60. Provisional Order of Discipline, filed September 27, 2002.

Attachment 2 - Evidence

P-1 **Medical** Act **1983** (as **amended) (Enclosure** 1)

P-2 **The General Medical Council Preliminary** Proceedings Committee and Professional **Conduct Committee** (Procedure) **Rules** Order of **Counsel 1988, entitled Statutory** Instruments **1988 No.** 2255 - **Medical** Profession. **(Enclosure** 2)

P-3 Memorandum **of Conviction, indicating** that **Dr. Kaul was** convicted on February 22, **bearing a** signature by an officer of the Court on May **16, 2001 (previouslyprovided as** Exhibit F **to** the Certification of **DAG** Niedz **and** as Enclosure 3)

P-4 **Sentencing remarks made** on February 22, 2001 **(previously introduced before** the **Board, Enclosure** 4) (4 **pages)**

P-5 **Statement** of **Detective Superintendent** Patricia **Ferguson** Gallan, executed **August *29***, 2001 **(Enclosure** 5) (Note: admitted for the limited **purpose** of corroborating **other** evidence.)

P-6 GMC Correspondence (Enclosure 6) **-(accepted *as* to** admissions and subject to redaction **of** one sentence on the **second** page of **the submission}**

P-7 GMC Health **Section** Correspondence (Enclosure 7)SEALED(Exhibit A to **supplemental charges)**

P-8 Prosecution **Statements** and **Expert** Reports (admitted on the date of the hearing) (215 pages)

P-9 Defence Expert **Reports** (admitted on the date of the hearing) **(117** pages)

P-10 Transcript of **police interview with** Dr. Kaul (Enclosure10) (54 **pages)**

P-11 Transcript of Judge's **summing up (previously** admitted as R-1, Enclosure 4) (102 **pages,** plus a 4 page transcript of **a proceeding** on **February** 21, 2001 and 7 **page proceeding** on **February** 22, **2001)**

P-12 **Documents relating** to **Mrs.** Isatu **Bangura** (Enclosure 12), **more specifically 12A *is*** entitled **Death Certificate** of **Mrs.** Isatu Bangura and copy of the **Coroner's** Interim **Certificate** of the **fact** of the death of Mrs. Isatu Bangura; and 12B is entitled **copy** of **Homerton** and St. Bartholomew's **Hospital** Records, Copy ***of*** **Nursing** Notes and **Copy of the medical** records **held by** the Silverhill **Clinic** - United ***States*** of America (two **parts)**

P-13 Copy of the Dental **Records** of Mrs. Isatu Bangura and Documents relating **to** Dalston Dental Centre **(Enclosure** 13)

P-14 **Documents received** from Dr. Kaul (Enclosure 14) More specifically CV for Dr. Kaul; the **application to establish equivalence** of **training** for entry ***to*** the **Specialist** Register of the **Royal College** of **Anaesthetists;** the **response** to the **application and** the **result of the appeal** by Dr. Kaul to the Royal **College** ***of*** **Anaesthetists.**

P-15 Transcript **of** the Professional Conduct Committee, **January** 11, 2002 **(Enclosure** 15) (20 pages)

P-16 Letter from Dr. **Kaul** dated May 2, 2002 **(Enclosure 16)**

P-17 (By letter of March **21,** the **Board** ruled **that** this document **would** be excluded.)

P-18 **Signed** Consent **Order** dated March 4, 2002 (Enclosure **18)** (1 **page),** extending the Interim Order of Suspension **of September 1,** 2000 to **September** 15, 2002

P-19 Order of the Administrative Court dated March 12, 2002 (Enclosure19), extending the Interim **Order** of Suspension of September 1, *2000* to **September 15,** 2002

F-20 Certification of DAG **Alan** R. Niedz **with** attached Exhibits **A-F** and H. **(Note:** (By **letter of** March **21,** the Board ruled that **Exhibit** *G* would be excluded.)

P-20 (a) May *30,* 2002 Order of Erasure by England's General **Medical** Council (GMC) **Professional Conduct** Committee regarding **Dr. R.A.** Kaul, **along** with the **Notification** of the **Decision of** the **Professional Conduct Committee in** the **absence** of **Practitioner** ***(6*** pages).

P-20 (b) **Completed Demand** for Statement **in** Writing Under Oath, **dated August 16, 2002, by Richard A.** Kaul, M.D. ("Kaul Statement")**(6 pages).**

P-20 *(c)* **April** 8, 2001 Medical **Staff' Application** for **Appointment to Hackensack University Medical** Center for Richard **A. Kaul and November** 30, **2001 Adverse Action Report** from **Hackensack University** Medical Center **to** National **Practitioner** Data Bank re: Richard A. **Kaul,** provided **in response** to administrative **subpoena.** (6pages)

P-20 (d) April 29, 2001 Initial Application for Registration pursuant to the **New** Jersey **Controlled Dangerous** Substances **Act of** Dr. **Richard** A. **Kaul,** M.D., signed **by** Dr. Kaul **on April 27, 2001. (Partial application)**

P-20 *(e)* **Transcript** of **May 30, 2002 proceedings, of General Medical Council Professional** Conduct **Committee regarding** Dr. R.A. **Kaul.** (20 **pages)**

P-20(f) November 4, **2002** Letter **accompanying a copy** of the **Certification of Conviction *of* Richard** Arjun Kaul of **manslaughter** on February **22, 2001.** *(2* **pages) (Note:** the **contents** of the **certification** are **identical to** P-3 in evidence, except for the date of **the** certifying official.)

P-20 (h) **Statement** submitted **by** Dr. Kaul for **consideration by** the Professional Conduct Committee, with an accompanying cover letter of Venessa **Carroll of the** Conduct **Case Presentation Section** of the **General** Medical **Council.** (initially submitted **January 2002)**

P-22 Documents **related** to **Biennial Renewal Application** of **Richard Kaul,** M.D., bearing 9/29/00 **signature** (Exhibit B **to supplemental** charges)

P-23 Documents **related** to Biennial Renewal **Application** of **Richard** Kaul, M.D. **bearing** 6/3/01 date

P-24 Certification of **Judith** Margaret **Chrystie**

P-25 **Application** for **privileges** from St. Clare's Hospital

R-1 The "Summing-Up" **(Admitted** as P-11)

R-2 Portion of the St. Clare's **Application**

Attachment 3 - Sealed Addendum

By the supplemental charges, respondent is alleged to have failed to disclose certain information relating to his illegal use of controlled substances and the steps that he had undertaken to deal with that use. Because there are no charges that this impairment *in* any way compromises his present ability to practice medicine with reasonable skill and safety, in resolution of respondent's request for the entry of a protective order, the Board agreed to handle testimony, argument and exhibits relating to the "health issue" in closed session. Accordingly, this attachment to the Final Decision and Order shall remain sealed, available only for purposes of appellate review. References within the body of *the* decision will refer only to the "health issue." The facts relating to this issue are gleaned from P-7 in evidence, which shall remain sealed. The Certification of Deputy Attorney General Alan Niedz, dated February *6*, 2003, shall also be sealed, and portions of the Motion to File Supplemental Charges, as well as the Verified Charges themselves will be redacted before public dissemination. All portions of these documents will, however, be made available for appellate review, and the Board will be guided by any future directions from any reviewing courts as to the handling of the record in this matter.

STATEMENT OF FACTS

In or around August of 1999, respondent was confronted by colleagues and employers concerning his mood swings and general

medical condition. He acknowledged then, as he does now, that in response to the stressors in his life, he began self medicating with pethidine, an opiate analgesic, classified in the United States as a controlled substance. Initially he administered the drug intramuscularly, but later switched to intravenous administration. He was suspended from Highgate Private Hospital, but continued to work at the Welbeck Clinic. He asserts now that his use was limited to 4 times, and that he quickly realized a need to seek help and did so. He addressed a letter to the GMC on August 19, 1999, seeking assistance. Reports from the health care professionals responsible for evaluating and monitoring him reflect a more substantial history of self-use -- as much as 150 mg. daily, spanning over a three to five month period of intermittent use. While participating in the program, he tested positive for cannaboids on September 9, 1999, and again on September 21, 1999 - a fact he acknowledged in his testimony before the Board, indicating that he did not even consider that the recreational use of marijuana was use of illegal drugs.

On April 28, 2000, the Health Committee of the GMC sent respondent a "Voluntary Undertaking" letter, describing in detail, the compliance that was expected for continued participation in the Health Program. Paragraphs 7 through 9 were expressly described as "restrictions:"

> 7. To obtain the prior approval of your medical supervisor of the suitability of any post for which you may consider applying.

8. To cease working immediately if your medical supervisor so advises.
9. To inform any organisation or person employing you to undertake medical work, including any locum agency or deputising service, or potential employer at the time when you are applying for a post, that you are subject to supervision under the health procedures and inform them of the above undertakings (7) to (9), restricting your practice and the name of your medical supervisor.

The agreement contemplates the need to "exchange information" with prospective employers. On June 21, 2000, respondent submitted a letter to the Health Committee, agreeing to the restrictions imposed by the terms of the April 2000 letter. The progress report from his medical supervisor, Ken Checinski, dated October 18, 2000, reflected improvements in respondent's condition, noted that he "appeared to be coping well with the pressure attendant to the impending court appearance", and recommended continued medical supervision. The medical supervisor's April 12, 2001 report noted that respondent had been "only partially compliant." The report stated that the supervisor had seen respondent only once since the last report, on November 24, 2000. An interim order of suspension was entered on March 1, 2001, after the GMC's preliminary review of the conviction. In early April of 2001, respondent cancelled an appointment with his assigned monitor and failed to show up for required testing on April 9 (one day before he executed an application for privileges at Hackensack Medical Center). Troubled by the difficulties encountered in maintaining the supervision, Mr. Checinski raised "concern about his ability to practise even on a limited basis until. the process of supervision is re-established."

He suggested that respondent had plans to return to the United State, specifically to Montefiore Medical Center in New York. With respect to these plans, Mr. Checinski noted:

> It may be that respondent could practice in this new post on a limited basis in keeping with previous restrictions on practise because this would be a more supportive environment with sympathetic colleagues and close friends.

Respondent did appear for the visit on April 27, 2001, one *day* after he submitted his application for a registration to prescribe and dispense controlled substances in New Jersey. A follow-up letter from Mr. Checinski, dated April 27, reflects that respondent had indicated that "he has decided to leave medicine and I have not tried to dissuade him." Mr. Chechinski found no evidence of substance use or misuse. Because his British license was suspended by virtue of the GMC order, the monitoring conditions embodied in the "voluntary undertaking" were lifted on October 22 2001.

When respondent executed his biennial renewal application (P-22) on September *29*, 2000, asserting that he had not illegally used controlled substances within the last two years, his answer was untruthful. He had self medicted with pethidine and had used marijuana during the pertinent period. His failure to have disclosed his participation in the GMC's health program is also actionable. His failure to disclose restrictions on his license to Hackensack University Medical Center contravened the terms of the voluntary undertaking *to* which he had agreed, which remained in place *at* the time that he sought privileges at that institution.

And his failure to have sought medical supervision upon emigration to New Jersey ignored the guidance of those whose help he had enlisted. Thus the same pattern of dissembling 'omissions that is described at length in the body of this Final Decision and Order is replicated with respect to the questions pertaining to health conditions.

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10,2000

All licensees who are the subject of a disciplinary order of the Board are **required** to provide the information **required** on the Addendum to these Directives. The information **provided will be** maintained separately and **will** not **be** part of **the public document** filed with the **Board.** Failure to **provide** the information **required** may result in further disciplinary action for failing to cooperate with the **Board, as** required **by** N.S.A.C. 13:45C-1 et sea. Paragraphs **1** through **4 below shall apply** when a **license** is suspended or **revoked** or **permanently** surrendered, with or without prejudice. **Paragraph 5** applies to **licensees** who are the subject of an order which, **while** permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly **forward** to the Board office at **Post** Office Box 183, 140 East Front Street, **2nd** floor, Trenton, New **Jersey** 08625-0183, the original **license,** current biennial registration and, **if** applicable, the original CDS registration. In **addition,** if the licensee holds a Drug Enforcement Agency (DEA) registration, he or **she** shall promptly **advise** the DEA of the licensure action. (With respect *to* **suspensions** of a finite **term,** at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee **should** contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon hislher **DEA** registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice **of** medicine in this State. This prohibition not only bars a licensee from rendering professional services, **but** also from providing an opinion **as** *to* professional practice or **its** application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose hislher licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the **use of** his/her provider number **by** any health care practice or any other licensee or health care **provider.** (In situations where the licensee has **been** suspended for less than one year, **the** licensee **may** accept payment from another professional who is using hislher office **during** the period that the licensee is **suspended,** for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medica! records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number[1]:_____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

_____

_____

_____

_____

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

_____

_____

_____

_____

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

_____

[1] Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.